

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLARENCE LEE, SR. and	§	
ANGELIA LEE both	§	
individually and as next	§	
friends of C.L., a minor	§	
	§	
Plaintiff	§	
vs.	§	No. <u>5:08-CV-00531-OLG</u>
	§	
UNITED STATES OF	§	
AMERICA,	§	
	§	
Defendant	§	
	§	

PROPOSED ORDER ON PLAINTIFF’S MOTION FOR JUDGMENT

Upon remand from the United States Court of Appeals for the Fifth Circuit and having considered the submissions of the parties and the entire record, it is ORDERED that the Clerk enter final judgment to be taken in favor of the Plaintiffs against the United States in the amount of \$5,113,523 and in the amount of \$25,229 in taxable costs.

It is FURTHER ORDERED that First Capital Surety and Trust Company is here by appointed Trustee of the following two trusts:

- i. “C.L. Reversionary Trust”; and
- ii. “C.L. Special Needs Trust.”

It is FURTHER ORDERED that Trustee First Capital Surety and Trust Company shall retain separate segregated accounts for the above trusts and shall not co-mingle the monies and any interests or dividends, with any other funds or assets, including any other funds or assets of Plaintiff C.L.

It is FURTHER ORDERED that within 90 days of this Order, the United States shall deposit into the IOLTA Trust Account of Archuleta & Associates, P.C., for disbursement as follows:

1. **\$1,751,889.35** to be paid as up-front reasonable and necessary costs & attorneys fees;
2. The remainder of the judgment (**\$3,386,862.65**) should be paid into the “C.L. Reversionary Trust.”

It is FURTHER ORDERED that the Trustee, First Capital Surety and Trust Company, upon immediate receipt of funds, shall pay **\$1,014,201.21** from the “C.L. Reversionary Trust” to “C.L. Special Needs Trust,” which represents the net future care payments from 2010, the date of trial, to present, and the non-economic harms suffered by Plaintiff C.L.

It is FURTHER ORDERED that the Trustee, First Capital Surety and Trust Company, shall make periodic payments from the “C.L. Reversionary Trust” into the “C.L. Special Needs Trust” every month until C.L.’s death or the corpus of the “C.L. Reversionary Trust” depletes, whichever should occur first. The periodic payments should track Schedule B of the attached Reversionary Trust.

It is FURTHER ORDERED that Trustee, First Capital Surety and Trust Company, shall have no power or authority to deviate from the monthly periodic schedule stated above.

It is FURTHER ORDERED that Trustee, First Capital Surety and Trust Company, shall make no payments from the “C.L. Reversionary Trust,” except those periodic payments stated above regardless of Plaintiff C.L.’s medical or other needs, and

trustee fees. Trustee First Capital Surety and Trust Company shall be entitled to receive said fees based on the trust corpus in accordance with its published fee schedule in effect when services are rendered.

It is FURTHER ORDERED that Trustee, First Capital Surety and Trust Company, has power to make payments from the “C.L. Special Needs Trust,” in accordance the trust document attached to this order for the benefit of C.L. and to pay reasonable and necessary trustee fees.

It is FURTHER ORDERED that, in the event funds remain in the trust corpus of the “C.L. Reversionary Trust” at the death of C.L., the Trustee shall pay the entire balance of the trust corpus to the United States of America. The payment shall be made payable to the United States Treasury, to Clarence Lee, et al., and mailed to the following address, or upon written notice, any subsequent change of address: Director, Torts Branch (FTCA Staff), Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044.

It is FURTHER ORDERED that, in the event funds remain in the trust corpus of the “C.L. Special Needs Trust,” at the death of C.L., the corpus should not revert to the United States, but instead be disbursed in accordance with Texas state law on wills and estates.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE